

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

DEPT OF TRANSPORTATION
FACETS
JUN 14 2007

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)
In the Matter of:)

Accent Movers, Inc.,)

Respondent.)
)
)
_____)

Docket No. FMCSA-2007-0089

(Southern Service Center)

CLAIMANT'S MOTION TO CANCEL AND STAY OR CONTINUE HEARING
PENDING DECISION ON CLAIMANT'S MOTION FOR SUMMARY
JUDGMENT

Claimant, Field Administrator for the Federal Motor Carrier Safety Administration (FMCSA), Southern Service Center, respectfully requests the Administrative Law Judge cancel and stay or continue the scheduled hearing in this proceeding pending a Decision by the Administrative Law Judge on Claimant's Motion for Summary Judgment. In support thereof Claimant states:

1. The above-captioned civil penalty proceeding was commenced through the issuance of a Notice of Claim pursuant to 49 C.F.R. Part 386 which included a Statement of Charges detailing the violations of Federal statute and regulations discovered during a compliance review completed on or about May 17, 2007 of Accent Movers, Inc. The Notice of Claim charged Respondent with one violation of 49 C.F.R. § 392.9a(a) / 49 U.S.C. § 14901(d)(3), failure to register or maintain registration as a household goods broker or motor carrier. The Notice of Claim proposed a civil penalty of \$25,000 for the charged violation. Respondent, through its attorney, timely filed a

reply to the Notice of Claim. In its reply Respondent denied the charged violation and requested a formal hearing in this proceeding. The Field Administrator consented to Respondent's request for hearing on December 17, 2007.

2. On November 12, 2008 the Assistant Administrator served an Order forwarding the matter to the Office of Hearings for an administrative law judge to preside over the proceeding. The case was assigned to the Honorable Richard C. Goodwin by Order served November 26, 2008.

3. A Hearing before Administrative Law Judge Goodwin was originally set for the dates of March 16-20, 2009. On March 11, 2009 Judge Goodwin granted Respondent's unopposed motion for continuance and reset the Hearing for the dates of June 15-19, 2009.

4. Claimant believes there are no material issues of fact. Further, Respondent produces no evidence supporting its general denial of the charged violation. Respondent, in its response to Claimant's discovery requests, produces no substance or basis for its denial, and has stated it does not intend to produce any exhibits or documentation at hearing. (*See Attachments G and I to Claimant's Motion for Summary Judgment*).

5. On May 29, 2009 Claimant served a Motion for Summary Judgment for consideration by Administrative Law Judge Goodwin. Claimant believes based on all of the pleadings, evidence, responses to discovery, and admissions, that it has established a *prima facie* case and that summary judgment is appropriate as a matter of law. Summary judgment, if granted, would be dispositive of the proceeding; even if denied, the issues presented for hearing will likely be substantially narrowed through the Decision on Claimant's motion. Claimant believes it is in the interests of judicial economy to stay

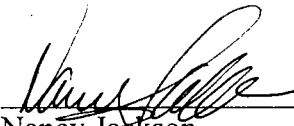
any hearing in this proceeding pending a Decision on Claimant's motion for summary judgment. Additionally, within the last week Claimant obtained additional information including an additional witness interview summary and potential additional witnesses with relevant information. Claimant has produced to Respondent through a supplement to its discovery responses the summary of the witness interview and provided contact information for the additional potential witnesses.

WHEREFORE, Claimant respectfully requests the Hearing in this proceeding currently set to commence on June 15, 2009 be cancelled and stayed or continued pending Decision by Administrative Law Judge Goodwin on Claimant's Motion for Summary Judgment.

Respectfully Submitted,
Attorneys for the Claimant

Date: May 29, 2009

By:



Nancy Jackson

Office of Chief Counsel
Federal Motor Carrier Safety Administration
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Lakewood, Colorado 80215
303-407-2363
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CERTIFICATE OF SERVICE

This is to certify that on the 29th of May 2009, the undersigned served, as specified, the designated number of copies of Claimant's Motion to Cancel and Stay or Continue Hearing Pending Decision on Claimant's Motion for Summary Judgment to each of the parties listed below:

The Honorable Richard C. Goodwin Administrative Law Judge Office of Hearings, M-20 U.S. Department of Transportation 1200 New Jersey Avenue, SE Room E12-320 Washington, DC 20590	Original and one copy Federal Express FedEx # 7966 4939 6545
John L. Gamboa Acuff Gamboa & White, L.L.P. Attorneys for Respondent 2501 Parkview Drive, Suite 405 Fort Worth, Texas 76102-5816	One Copy Federal Express FedEx # 7976 3681 6802
US DOT Dockets Docket Operations U.S. Department of Transportation 1200 New Jersey, SE West Building Ground Floor, Room W12-140 Washington, DC 20590-0001	One Copy Federal Express FedEx # 7966 4938 4449
Joanne A. Cisneros Division Administrator Federal Motor Carrier Safety Administration Texas Division 903 San Jacinto Blvd. Austin, Texas 78701	One Copy Internal Mail
Nancy Jackson Office of Chief Counsel Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, CO 80215	One Copy Internal Mail
Darrell L. Ruban Field Administrator c/o Paula Smith Federal Motor Carrier Safety Administration Southern Service Center 1800 Century Blvd Suite 1700 Atlanta, GA 30345	One Copy Federal Express FedEx # 7966 0998 7142

